

BUDGET SERVICE COMPANY LICENSE

No person shall operate a budget service company in the State of Indiana without having obtained a license from the Department of Financial Institutions, Non-Depository Division. There is a \$250 application fee. Licenses are renewed annually by August 31st. The license renewal fee set by the department is presently \$250 per location.

The department may not issue a license to any person who is an employee of, owner of, or affiliated in any way with a collection agency or a process serving business.

The license application must include:

- ✓ A sworn statement that no owner, partner, associate or officer has been convicted of a felony and a State Police Report from State of residence for each principal (officer/partners/ owner/Indiana manager)
- ✓ A CPA prepared reviewed or audited financial statement of the company showing a net worth of at least \$100,000 and liquid assets of at least \$50,000
- ✓ A bond to the State of Indiana in the sum of \$25,000 with surety to the satisfaction of the Department of Financial Institutions and be approved as to form by the State's Attorney General; conditioned upon the faithful performance of the rules and regulations of the department and in compliance with the laws of the State of Indiana. Said bond shall also indemnify any person damaged by failure on the part of the licensee to conduct the business in accordance with the provisions of the act.
- ✓ Credit Report for business and/or principals.
- ✓ Three reference letters, one must be a financial institution.
- ✓ If a corporation, a copy of Certificate of Authority to do business in Indiana from the Indiana Secretary of State.
- ✓ If D/B/A, copy of assumed name certificate from County Recorder Copy of business plan
- ✓ List of other states where operating as a lender and/or broker
- ✓ Business resume for the manager, owner, partners, and all officers, as applicable.

✓ Copy of your proposed Budget Service Company Agreement.

✓ Copy of your proposed Budget Service Company Budget Analysis Form.

✓ Fee schedule.

THE BUDGET SERVICE COMPANY LICENSE APPLICATION IS NOW ON THE INTERNET.

The INDIANA BUDGET SERVICE COMPANIES ACT, IC 28-1-29, contains the requirements for budget service companies.

DEFINITIONS

"**Person**" includes individuals, partnerships, associations, and corporations.

"**Budget Service Company**" is any person doing business as a budget counseling, credit counseling, debt management, or debt pooling service or holding himself out, by words of similar import, as providing services to debtors in the management of their finances and debts, and contracting with the debtor for a fee to receive from the debtor and disburse any money or anything of value. "Budget service company" includes an entity that simply holds any check, personal check, money order, personal money order, draft, or any other instrument for the transmission of money.

"**Contract Debtor**" means a debtor who has entered into a contract with a licensee. "Debtor" means an individual whose principal debts and obligations arise out of personal, family, or household use and shall not apply to persons whose principal indebtedness arises out of business purpose transactions.

"**Finances**" means a savings deposit that is made on behalf of a contract debtor; owned and controlled exclusively by the contract debtor and not a licensee who has a power of attorney of the contract debtor; and placed in a bank or savings institution chartered by the state or federal government.

SUSPENSION OR REVOCATION OF LICENSE

The department may revoke or suspend any license issued under the act for the following causes:

- ◆ Conviction of a felony or of a misdemeanor involving moral turpitude.
- ◆ Violation of any of the provisions of the act.
- ◆ Fraud or deceit in procuring the issuance of a license or renewal under the act.
- ◆ Indulging in a continuous course of unfair conduct.
- ◆ Insolvency, bankruptcy, receivership, or assignment for the benefit of creditors by a licensee.
- ◆ Licensee lending money to any debtor that has subscribed to the licensee's services.
- ◆ Offering to pay or give any cash, fee, gift, bonus, premiums, reward or other compensation to any person for referring any prospective customer to the licensee, except a licensee may reduce the fees of a contract debtor who is a client of the licensee if the contract debtor refers a prospective customer to the licensee.

REQUIREMENTS AND RESTRICTIONS

A Licensee:

- ◆ May not accept an account unless a thorough, written budget analysis of the debtor indicates that the debtor can reasonably meet the payments required in the budget analysis.
- ◆ May not enter into a contract with a contract debtor for a period longer than twenty-four (24) months.
- ◆ Shall deliver to every contract debtor, at the time the contract is made, a copy of the contract, showing the date executed, the maximum rate of charge, initial set up fee, the cancellation fee, and amount of debts claimed by the contract debtor to be due his creditors, and shall immediately notify all creditors of the licensee's and debtor's relationship. The contract shall specify the schedule of payments from the debtor under the debt program.
- ◆ May take no fee unless a debt program or finance program, or both agreed upon by the licensee and the contract debtor has been arranged. All creditors must be notified of the debtor's and licensee's relationship. Acceptance of a program payment constitutes agreement by the creditor.
- ◆ Shall give to the contract debtor a dated receipt for each payment, at the time of the payment, unless the payment is made by check, money order, or direct deposit.
- ◆ Shall, upon cancellation by contract debtor of the contract, notify immediately in writing all creditors of contract debtor.

◆ May not, except as provided in IC 28-1-29-8(7), receive a fee from the contract debtor for services in excess of fifteen percent (15%) of the amount the debtor agrees to pay through the licensee, divided into equal monthly payments over the term of the contract. The total monthly amount of fees paid by the contract debtor to the licensee plus the fair share fees paid by the contract debtor's creditors to the licensee shall not exceed twenty percent (20%) of the monthly amount the debtor agrees to pay through the licensee. The accrual method of accounting shall apply to the creditor's fair share fees received by the licensee. The program fee may be charged for any (1) month or part of a month.

As a portion of the total fees and charges stated in the contract, the licensee may require the debtor to pay a maximum initial payment of fifty dollars (\$50). The initial payment must be deducted from the total contract fees and charges to determine the monthly amortizable amount for subsequent fees.

Unless approved by the department, the licensee may not retain in the debtor's trust account, for charges, an amount more than one (1) month's fee plus the close-out fee. Any fee charged by the licensee to the debtor under the act for services rendered by the licensee, is not considered a debt owed by the debtor to the licensee.

Upon cancellation by contract debtor or termination of payments by contract debtor, may not withhold for his own benefit, in addition to the amounts specified, more than one hundred dollars (\$100), which may be accrued as a close-out fee. The licensee may not charge the contract debtor more than one (1) set up fee, or cancellation fee, or both unless the contract debtor leaves the services of the licensee for more than six (6) months.

TRUST FUNDS

All funds received by a licensee or his agent for the purpose of paying bills, invoices or accounts of a debtor shall constitute trust funds owned by and belonging to the person from whom they were received. All such funds received by a licensee shall be separated from the funds of the licensee no later than the end of the same business day following receipt by the licensee. Such funds are not subject to attachment, levy of execution or sequestration by order of court except by an obligor for whom a licensee is acting as an agent in paying bills, invoices, or accounts.

Each licensee shall make remittances within thirty (30) days after initial receipt of funds, and thereafter remittances shall

be made within fifteen (15) days of receipt, less fees and costs, unless the reasonable payment of one (1) or more of the debtor's obligations requires that the funds be held for a longer period so as to accumulate a sum certain.

At least once every (3) months' period, the licensee shall render an accounting to the debtor which shall itemize the total amount received from the debtor, the total amount paid each creditor, the amount of charges deducted, and any amount held in reserve. A licensee shall, in addition thereto, render such an accounting to a debtor within seven (7) days after written demand, but not more than three (3) per six (6) month period.

BOOKS, ACCOUNTS, AND RECORDS

A licensee shall maintain in its business such books, accounts, and records as will enable the department or the state's attorney general to determine whether such licensee is complying with the act. Such books, accounts, and records shall be preserved for at least three (3) years after making the final entry of any contract recorded therein.

The department will examine all books, records, and accounts of any person doing business as a budget service company at least once a year. The cost of such examination will be paid by the company upon a fee fixed by the department under IC 28-11-3-5.

The record keeping system of a licensee shall be made available in Indiana for examination. The department shall determine the sufficiency of the records and whether the licensee has made the required information reasonably available. For the purpose of discovering violations of the act and securing information necessary for the enforcement of the act, the department may investigate a licensee or person that the department suspects is operating without a valid license and in violation of the act.

The Department of Financial Institutions also licenses and regulates loan companies, pawnbrokers, check cashers, money transmitters, and rent-to-own businesses.



Starting a Budget Service Company



DEPARTMENT OF FINANCIAL INSTITUTIONS

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Indianapolis, Indiana 46204
317-232-3955
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